THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.05.2007

\+ **WP(C) 2979/2003**

AIR INDIA LIMITED ...Petitioner

- versus -

THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES & ANR ...Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Sandeep Sethi, Sr Advocate with Mr Lakshay Sawhney, Mr V.K. Kini and Ms Divya Jain
For the Respondent No.1 : Mr Sumeher Bajaj.
For the Respondent No.2. : Mr M Dutta.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner (Air India) is aggrieved by the order dated 11.04.2002 passed by the Chief Commissioner for Persons with Disabilities in purported exercise of powers under the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the "said Act").

2. The first point urged by the learned counsel for the petitioner is that under Section 32 of the said Act, posts are to be identified for the purposes of giving employment to persons with disabilities by the appropriate Government. In this case, the appropriate Government is the Central Government and the Ministry of Social Justice and Empowerment has issued a notification dated 31.05.2001 based upon the reports submitted by an Expert Committee on 03.03.2001 identifying the list of jobs / posts for the purposes of Section 32 of the said Act. It was submitted by Mr Sethi, the learned Senior Counsel appearing on behalf of the petitioner, that the posts advertised by virtue of the advertisement dated 08.07.1997, which is the advertisement in issue in the present petition, related only to Senior Management Professionals and to placement as Deputy General / General Manager / Director in the General Executive Cadre. He submitted that in the list annexed to the said notification, none of these posts find mention. Mr Sethi, submitted that the notification came into force in 2001 and the list of identified posts was annexed to the said notification whereas the advertisement was taken out in 1997 for which purpose the identified posts were as per the list given in annexure P-7 at page 33 of the paper book. As per that list the posts advertised were not identified for the purposes of Section 32 of the said Act.

3. The next point urged by Mr Sethi is that, in any event, nobody has been appointed pursuant to the said advertisement because of various reasons

including over staffing in Air India. So, according to him, it is not a case of a person being appointed pursuant to the said advertisement who was not a handicapped person and, therefore, there was no question of construing the same as a situation where a person with disabilities had not been granted an equal opportunity.

4. The third point urged by Mr Sethi is that the Chief Commissioner did not have the power to issue the direction that he did. The directions issued by the Chief Commissioner are as under:

> "11. In the light of overall circumstances and upon taking due consideration of the material available on record and submissions made by the parties, the respondent is directed to revive the recruitment exercise for filling up of the identified post(s) for Physically Handicapped persons and to intimate the name and complete mailing address of the Physically Handicapped person(s) appointed against the identified post(s)."

5. Mr Sethi referred to the provisions of Sections 58, 59 and 63 of the said Act to indicate that the Chief Commissioner did not have powers to issue the direction of the nature which is impugned herein. The Chief Commissioner, according to Mr Sethi, under Section 59 of the said Act, had the power to look into the complaints and to take up the matter with the appropriate authorities. According to him, the order that has been passed by the Chief Commissioner is beyond the scope of the provisions of Sections 58 and 59 of the said Act. In

support, he referred to the decision in the case of ***Bhupinder Singh v Delhi Commission for Women & Ors : 2007 III AD (DELHI) 134*** wherein this court, according to Mr Sethi, under similar circumstances held that the Commission for Women did not have the power to direct interim maintenance under the provisions of the Delhi Commission for Women Act, 1994 which, according to Mr Sethi, were similar to the provisions of the present Act.

6. Lastly, Mr Sethi submitted that taking the powers of the Commissioner to the highest possible within the confines of the provisions of the said Act, the Commissioner could have asked or required the petitioner to reserve the requisite number of seats for persons with disability in terms of Section 33 of the said Act, in case, the petitioner was filling up posts but, he definitely did not have the power to direct the petitioner to fill up such posts. He placed reliance on a Constitution Bench decision of the Supreme Court in the case of ***Shankarsan Dash v Union of India :(1991) 3 SCC 47***.

7. Mr Dutta, who appears for the respondent No.2 referred to the factual matrix of the case and submitted that the post was, in fact, an identified post. He referred to pages 123, 127 and 162 of the paper book to indicate that the post had been identified and that Mr Sethi was not correct in saying that the post in question was not identified within the meaning of Section 32 of the said Act. Mr Dutta submitted that the identification of posts had been done even

prior to 1997 when the advertisement was taken out. For this purpose, he referred to the list which finds mention at page 162 of the paper book which was annexed to a Memorandum of 25.11.1986. Mr Dutta submitted that the Commissioner had the power to issue the direction that he did. Under the scheme of the Act, the Chief Commissioner was duty bound to act in the manner he did so as to safeguard the interests of persons with disabilities.

8. Mr Sumeher Bajaj, who appears on behalf of the respondent No.1, made submissions in detail with regard to the scope of powers of the Chief Commissioner. He referred to several decisions of the Supreme Court and of the High Courts. He referred to the following decisions :

1. ***Javed Abidi v Union of India : (1999) 1 SCC 467***

2. ***Kunal Singh v Union of India & Another : (2003) 4 SCC 524***

3. ***The Secretary State of Karnataka v Nagveni M.C. WP No.25190/2005 (Karnataka High Court)***

4. ***Dilbagh Singh v DTC : 2005 (84) DRJ, 208***

5. ***Govt of NCT of Delhi and Others v All India Confederation of Blind : 128 (2006) DLT 695 (DB).***

9. The first two decisions relate to the spirit and scope of the said Act although they do not deal directly with the powers of the Commissioner. They indicate broadly the necessity to act for the benefit of disabled persons so that

they are not denied equality of opportunity in employment. The third decision is of the Karnataka High Court and it deals in detail with the specific powers of the Commissioner under the said Act. The learned counsel for the Respondent No.1 relied upon and referred to this decision in great detail. The fourth decision, that is the case of ***Dilbagh Singh*** (supra), is of a learned Single Judge of this court in which it has been held that the Chief Commissioner's power are not purely recommendatory but also adjudicatory of the entitlements of persons with disabilities. The decision goes to the extent of indicating that the Chief Commissioner's role is virtually the same as that of a quasi judicial authority inasmuch as hearings are contemplated. The fifth decision was cited by Mr Bajaj to indicate that where two views are possible, the one beneficial to the disabled, should be adopted.

10. As noted above, essentially four points were urged. The first point was with regard to the fact that the post advertised as per the advertisement dated 08.07.1997 was not an identified post in terms of Section 32 of the said Act. There is controversy with regard to this. The learned counsel appearing for the respondent No.1 submitted that the said post was included in the list appended to the memo of 25.11.2986 and, therefore, it could be included as an identified post. The next point that Mr Sethi urged was that the issue does not survive inasmuch as nobody has been appointed pursuant to the said advertisement and has categorically stated that nobody would be appointed

pursuant to the said advertisement. The reasons for no further appointment that have been given are, *inter alia*, over-staffing and no requirement for the said post. The issue raised in respect of this aspect of the matter both by Mr Dutta and by Mr Bajaj, who appeared on behalf of the respondents 2 and 1 respectively, was that Air India had flouted the requirement of 3% quota for the handicapped, as indicated under the Act. According to Mr Dutta, numerous appointments had been made by Air India without taking into consideration the requirement of reserving 3% of such appointments for handicapped persons. Therefore, according to him, the direction given by the Chief Commissioner that the recruitment exercise ought to be revived is in order. This was the third point that was urged by Mr Sethi that no such direction could have been given and for that he submitted that, if at all a direction could be given by the Commissioner, he could have asked or required the petitioner to reserve the requisite number of seats in case the petitioner was deciding to fill up the posts in future.

11. The sum and substance of the controversy in the present case is with regard to the fact that the advertisement that was issued by the petitioner is no longer being pursued by the petitioner and nobody has been appointed to the post advertised and nobody would be appointed pursuant to the said advertisement. It is made clear that the petitioner does not require the filling up of such a post. The initial grievance of the respondent No.2 was that he was

not considered for this post and that a direction be given that this post be filled up and the petitioner be considered for the same. Such a direction, in my view, as has been given by the Commissioner and as has been set out in para 4 above, could not have been given. It is open to the petitioner to recruit persons for a specific purpose. The petitioner has to take a business decision as to whether those posts are necessary for the organisation or not. The Commissioner exceeded his jurisdiction in directing that the petitioner must appoint persons. However, it is another matter that where the petitioner decides to revive the recruitment exercise, then the direction given by the Commissioner would come into play inasmuch as the requirements of the Act of providing appointment for a minimum of 3% for physically handicapped persons would be applicable. Therefore, with regard to the submissions made above and the observations made by me, it would be appropriate to dispose of this writ petition by directing the petitioner to treat the direction given by the Commissioner as a general direction for filling up future posts so as to ensure that the minimum 3% quota reserved for physically handicapped persons is achieved by the petitioner. However, insofar as the respondent No.2's grievance with regard to the particular post advertised is concerned, that no longer survives. This is so because the petitioner is not filling up that post.

12. It is made clear that apart from the above observations and the directions, no other aspect of the matter has been conclusively determined by this court.

With these directions this writ petition stands disposed of.

BADAR DURREZ AHMED
(JUDGE)

May 21, 2007
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